

---

**SUBJECT:** Provide the City Council with requested information related to increasing the Affordable Housing Ordinance's 13% obligation

**DEPARTMENT:** Community Development Department

**STAFF:** Ken Murphy, Acting Community Development Director  
Sylvia Elias, Senior Housing Analyst

---

### **TITLE/RECOMMENDATION**

The purpose of this item is to provide the City Council with requested information related to increasing the Affordable Housing Ordinance's 13% obligation. It is recommended that the City Council provide direction on the following:

1. Whether to increase the affordability percentage requirement of 13% and, if so, to what percentage;
2. If changes are recommended, how to allocate the new affordability percentage requirement to the affordable income categories; and
3. Whether to conduct an economic feasibility study to support an increase in the affordability percentage requirement, if one is sought.

### **FISCAL IMPACT**

If required, a feasibility study could cost approximately \$40,000 to \$150,000 depending on the scope of work regarding the potential changes to the Affordable Housing Ordinance requirements and how the changes could affect various types of rental and ownership housing developments in Brentwood. In addition, there would be outside legal costs, the extent of which would depend on the nature of the changes to the Affordable Housing Ordinance, but would likely cost at least \$5,000 and likely more, depending on the scope of the proposed changes.

There is currently no budget allocated for a feasibility study. If the City Council directs staff to prepare a study, then staff would return to the Council with an estimated cost and a request for a budget amendment for the feasibility study and legal fees which would be funded by the Affordable Housing In-Lieu Fee Fund.



**BACKGROUND**

**COUNCIL REQUEST**

At its March 12, 2024 meeting, the City Council directed staff to bring forth a future agenda item to discuss options related to increasing the Affordable Housing Ordinance’s 13% affordable housing obligation. The Council directed staff to provide information related to an increase in the affordable housing obligation to 15% or 20%.

The City’s current Affordable Housing Ordinance (attached) was adopted by the City Council in 2022 and applies to residential developments of five or more lots:

- Residential developments consisting of five to nine dwelling units are required to either (a) construct one low-income affordable unit, or (b) pay a fee equal to fifty percent of the low-income in-lieu fee.
- Projects of ten or more dwelling units are required to construct or make possible the construction of a minimum of 13% of the total number of dwelling units within the residential development as affordable units.

An “alternative equivalent” (as defined in the Ordinance) to the above can also be approved by the City Council.<sup>1</sup> These requirements are applied prior to the application of any density bonus request.

If the minimum percentage was increased to 15% or 20%, there would be a slight increase in the number of units created, as illustrated in the below table using a hypothetical single family residential project of 50 units.

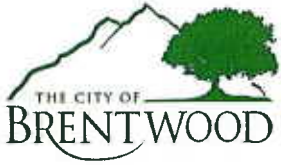
**Table 1: Hypothetical Affordable Unit Yield**

Project Size	13% Affordable	15% Affordable	20% Affordable
50 units	7 units (6.5 rounded up per the ordinance)	8 units (7.5 rounded up per the ordinance)	10 units

The Ordinance requires that the affordable units be allocated to specific income levels<sup>2</sup>, listed in Table 2 below. If the Council directs that the affordable percentage

<sup>1</sup> An alternative means of compliance must be provided for residential rental units, per Government Code Section 65850(g).

<sup>2</sup> Income guidelines are updated each July 1<sup>st</sup>. Source: State Department of Housing and Community Development (HCD), US Department of Housing and Urban Development (HUD) and Affordable Housing Model by City of Brentwood Housing Division.



be increased, they would also need to provide direction on how to allocate the affordable units by income level.

**Table 2: Current Affordability Requirements by Income Level**

<b>Ownership and Rental Development</b>	
Very Low-Income Households	3%
Low-Income Households	4%
Moderate-Income Households	6%
<b>TOTAL</b>	<b>13%</b>

**RHNA Allocation**

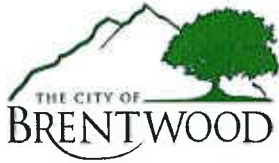
At the March 12<sup>th</sup> City Council meeting, members of the City Council expressed their concern regarding the difficulties in meeting the current Regional Housing Needs Allocation (RHNA) for Brentwood for very low, low and moderate income housing. Brentwood, along with most cities in the State, does not have enough affordable housing for its lower income residents, and is far from meeting its RHNA for very low, low, and moderate income households. As shown in the above table, an increase in the affordability requirements from 13% to 15% or 20% would produce more units that would apply towards the City’s RHNA requirements. Shown below is Brentwood’s current RHNA obligation (6<sup>th</sup> Cycle).

**Table 3: Brentwood’s RHNA Requirements**

<b>Income Level</b>	<b>Current RHNA (6th Cycle)</b>
Very Low	402
Low	232
Moderate	247
Above Moderate	641
<b>TOTAL UNITS</b>	<b>1,522</b>

**Active Residential Projects**

The City has amended its Affordable Housing Ordinance several times since it was first adopted in 2003. Under state law, the City can only apply the version of the City’s inclusionary ordinance that was in effect when the application was deemed complete, or when a preliminary application under SB 330 was filed. Therefore, the City is currently processing residential development applications that have different affordability requirements due to the timing of the applications. Table 3 below lists



**CITY COUNCIL AGENDA ITEM NO. G.5  
05/27/2025**

current active residential projects and which affordable requirement to which they are subject.

**Table 4: Approved and Active Residential Projects**

<b>Project</b>	<b>Type</b>	<b>Total Units</b>	<b>Approved by CC</b>	<b>AH Ordinance</b>	<b>AH Obligation/ Units</b>
<b>Approved Projects</b>					
7590/7650 Lone Tree	SF	40	6/11/2024	10%	1VL/2L/1M
Birch Street Duplex	SF	2	Approved administratively	13%	N/A
Bridle Gate	SF	272	8/27/24 12/10/24	10%	8VL/11L/8M
Inez Estates	SF	11	3/28/23	10%	1L
Jacobson Residence	SF	1	N/A	N/A	Paid in-lieu fee
Kayla Place Residences	SF	2	10/15/24*	N/A	N/A
O'Hara Apartments	MF	26	4/8/24	13%	1VL/1L/1M
Trinity Estates	SF	4	6/27/23	13%	N/A
Orchard Grove North	SF	34	8/13/24	13%	2VL/2M
St. James Court	SF	8	1/21/25*	N/A	N/A
Trinity Estates	SF	4	6/27/23	N/A	N/A
<b>Projects Under Construction</b>					
1015 Natwick Way	SF	1	3/10/22*	N/A	N/A
Chandler	SF	48	11/15/18	2%	Paid in-lieu fee
Hanson Lane	SF	94	10/24/23	10%	5VL/4L/3M
Kindred & Balfour	SF	14	3/11/14	2%	N/A



**CITY COUNCIL AGENDA ITEM NO. G.5  
05/27/2025**

<b>Project</b>	<b>Type</b>	<b>Total Units</b>	<b>Approved by CC</b>	<b>AH Ordinance</b>	<b>AH Obligation/ Units</b>
The Meadows	SF	140	8/28/18	N/A	DA
Orchard Grove South	SF	51	9/13/2022	2%	1L/5M
Orchard Trails	SF	77	9/13/22	2%	2L
Parkside Villas	SF	36	9/12/06*	10%	1L and Paid \$1M in-lieu
Toor Residence	SF	1	N/A	N/A	Paid in-lieu fee
Trilogy @ Vineyards	SF	1085	2004	N/A	Paid in-lieu fee
Trumark Trailside	SF	63	8/8/23	10%	2VL/2L/2M
<b>Development Applications In Review</b>					
6905 Brentwood Blvd	SF	5	TBD	13%	TBD
Brady Residence	SF	1	TBD	13%	N/A
Creekside Mixed Use	MF	270	TBD	N/A	All AH units - Moderate
Emblem	MF/SF	415 (315 Apartments/156 Duplex- Condos)	TBD	13%	TBD
Enclave (Mixed Use)	MF	170	TBD	13%	TBD
Enclave (North)	MF	160	TBD	13%	TBD
Enclave (South)	MF	170	TBD	13%	TBD
Minnesota Avenue	SF	4	TBD	N/A	N/A

DA = Development Agreement N/A = Not Applicable; less than required units per AH ordinance or 100% affordable units

\*Approved by Planning Commission or Design Review Committee

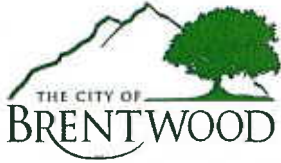


**Other Cities’ Affordable Housing Requirements**

For Council’s reference, staff conducted a brief survey of the affordable housing inclusionary requirements of other cities in the region. These are listed below in Table 5. Please note that several cities have varying percentage requirements depending on the target household income for the affordable units.

**Table 5: Affordable Housing Inclusionary Ordinance Requirement – Other Cities (as of 2024)**

City/County	Population	Affordable Housing Requirement
<b>Contra Costa County</b>		
<b>Brentwood</b>	<b>64,811</b>	<b>13%</b>
Antioch	115,632	None. (Inclusionary housing program being studied)
Clayton	10,683	10%
Concord	121,513	10%
Contra Costa County	174,289	15%
Danville	42,567	10% (20 units or less), 15% (21+ units)
El Cerrito	25,700	10% rental, 12% ownership
Hercules	26,063	10%
Lafayette	24,808	15%
Martinez	36,439	None.
Moraga	16,784	10%
Oakley	45,736	None.
Orinda	19,191	None.
Pinole	18,192	15%
Pittsburg	75,085	6%–15% rental, 15%-20% owner
Pleasant Hill	33,352	5% or 10% for most housing types
Richmond	112,735	9%-10% rental, 7-10% owner
San Pablo	31,088	None.
San Ramon	82,525	15%
Walnut Creek	69,433	6%-10%
<b>Alameda County</b>		
Alameda	78,071	15%
Albany	20,325	15%
Berkeley	125,327	20% (feasibility being evaluated)



**CITY COUNCIL AGENDA ITEM NO. G.5**  
**05/27/2025**

<b>City/County</b>	<b>Population</b>	<b>Affordable Housing Requirement</b>
Dublin	72,917	12.5%
Emeryville	13,314	15% rental, 20% ownership
Fremont	229,250	10% rental, 15% ownership
Hayward	159,770	6% rental, 7.5% or 12% ownership
Livermore	84,828	10% in Downtown, 15% outside Downtown
Newark	46,635	Rental only– 10% in Downtown, 15% outside
Pleasanton	75,960	15% multifamily, 20% single family
San Leandro	87,098	15%
Union City	66,432	15%

**LEGAL CONSIDERATIONS**

Any increase in the percentage of affordable units required by local ordinance triggers certain legal considerations that the City Council may wish to consider.

**Constitutional Matters**

First, the City’s ability to impose affordable housing requirements is subject to state and federal laws, including Constitutional protections. When a city imposes a price control on housing, such as rent control or inclusionary housing, the regulation cannot be such that it would create a regulatory taking. Thus, in the context of inclusionary housing, the required percentage of affordable units cannot be so high as to be “confiscatory.” According to the California Supreme Court, that means the ordinance must allow a developer a “fair and reasonable” rate of return.<sup>3</sup> To date there are no cases that specifically address what is a “fair and reasonable” rate of return in the inclusionary context.

**State Housing Law Issues**

Separate and apart from Constitutional considerations, the City must also examine if the ordinance is a constraint on housing production as part of the City’s Housing Element. HCD required the City to analyze the impacts of its inclusionary ordinance on the “cost, supply, and timing of housing,” and this analysis was included in the City’s adopted Housing Element.

Even if HCD does not demand a study under AB 1505 (discussed below), it may question whether an increase in required affordable units acts as a constraint on

---

<sup>3</sup> *California Bldg. Industry Ass’n v. City of San Jose* (2015) 61 Cal.4th 435.



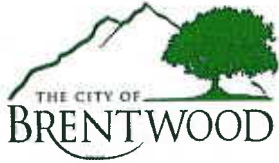
housing. Preparation of an economic feasibility study can resolve this potential issue.

### **FEASIBILITY STUDY**

Because of Constitutional takings law and, in particular, HCD's demands when reviewing Housing Elements, cities typically conduct an economic feasibility study before increasing the required percentage of affordable housing above 15%. The purpose of the economic feasibility study is to demonstrate that the inclusionary ordinance does not constrain housing production and provides housing developers with a reasonable rate of return, as required by the Constitution. The study would then support the Housing Element, serve as the required feasibility study if HCD demands one, and demonstrate that the ordinance is not confiscatory.

As passed in 2017, Assembly Bill 1505 (AB 1505; [Government Code Section 65850.01](#)) provides that HCD, among other things, can require that local governments submit an economic feasibility study if specified conditions exist. The proposed changes to the City's inclusionary ordinance could meet several of those conditions:

- Rental Inclusionary: AB 1505 only applies to ordinances with rental inclusionary requirements. Ordinances that only impose obligations on ownership housing do not trigger requirements under AB 1505. (The City's ordinance contains rental inclusionary requirements.)
- Ordinance adopted or amended after September 15, 2017: Local governments that adopt or amend ordinances after September 15, 2017 may be required to submit economic feasibility studies to HCD, if they meet the conditions discussed below. (Proposed changes to the City's ordinance would be adopted post September 15, 2017.)
- Level of Affordability: Only inclusionary ordinances that require more than 15% of the total number of units to be rented by lower income households at 80% or less of area median income (AMI) are potentially subject to HCD review under AB 1505. Currently, the City requires only 7% of base density to be affordable to lower income households and so its ordinance is not subject to HCD review.
- HCD Findings: Finally, HCD may review an inclusionary rental-housing ordinance requiring more than 15% lower income housing only if it finds that:
  - The jurisdiction failed to meet at least 75% of its share of its above-moderate income RHNA (prorated based on the length of time within the planning period) over at least a five-year period, based on the jurisdiction's annual Housing Element report. The City has met more



**CITY COUNCIL AGENDA ITEM NO. G.5  
05/27/2025**

than 75% of its above-moderate income RHNA.

- The jurisdiction failed to submit the annual Housing Element report for at least two consecutive years. The City has submitted its annual Housing Element report in a timely manner. Therefore, this provision does not apply.
- If HCD is not satisfied with the City's economic feasibility study, it can limit the City's inclusionary requirement for rental housing to no more than 15% lower income households.

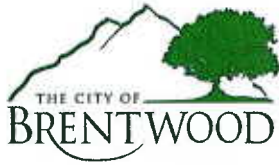
**Cost and Timing**

A feasibility study requires a complex technical analysis, therefore, an outside consultant would be required to complete it. The study could cost \$40,000 to \$150,000 depending on the scope of work and take approximately 3 to 12 months to complete depending on the availability of relevant data, number of meetings and time frame for Council consideration. The budget and timeline for feasibility studies vary significantly depending on how many modifications to the AHO requirements are tested, the number of housing types evaluated (e.g. single family and multifamily projects at alternative density and building types), and how the use of State Density Bonus Law is analyzed as developers use the program in many different ways. If the City Council directed staff to prepare a feasibility study, staff would return to the City Council with an estimated cost and budget request for Council approval.

Recommendation

Staff recommends that the City conduct a feasibility study if the Council directs the Affordable Housing Ordinance to be updated with a percentage requirement higher than 15%. Most cities in Contra Costa and Alameda Counties do not have an inclusionary requirement greater than 15%. Staff further recommends that any feasibility study contain, at minimum, the following components:

- Review recently built and approved projects in Brentwood to determine key development characteristics and how State Density Bonus Law (SDBL) has been used in the development of at least five typical types of housing (referred to as housing prototypes), for example, single family homes, small single family homes or duplexes, townhomes, garden style multifamily (with surface parking), and multifamily housing with structured parking.
- Gather current information regarding land costs, residential revenues and values, development costs, and return thresholds for the various housing prototypes from real estate and construction publications, recent appraisals, experienced real estate professionals, and published sources.



**CITY COUNCIL AGENDA ITEM NO. G.5**  
**05/27/2025**

- Interview developers undertaking housing developments in Brentwood or nearby cities that include one or more of these housing prototypes to gather their insights regarding housing development conditions, the use of DBL and relevant information regarding land prices, residential revenues, development costs, and return thresholds for the various housing prototypes.
- Gather, analyze and summarize the following information for each housing prototype that will be used as key assumptions in the financial analysis:
  - Density (units/per acre)
  - Typical unit size (square feet) and type (number of bedrooms/baths)
  - Residential rents and/or sales prices
  - Land costs
  - Offsite and onsite infrastructure costs
  - Building construction costs (residential and parking)
  - Development impact fees and other municipal fees
  - Construction financing, insurance and other soft costs
  - Financial return thresholds (for example, return on cost or yield on cost)
- Analyze and summarize affordable rents and sales prices by bedroom size to households at each target income level in the City's updated Affordable Housing Ordinance based on County Area-wide Median Income.
- Analyze and summarize the difference between market rate and affordable rents and sales prices (referred to as affordability gap).
- Prepare financial pro forma models that analyze project feasibility with and without the use of DBL for each of the housing prototypes taking into account these affordability gaps.
- Prepare summary tables and graphs that summarize the results of the financial feasibility analysis for each housing prototype.
- Present a summary of initial findings from the financial feasibility analysis at a meeting with developer stakeholders for review and comment.
- Refine the analysis based on these comments.
- Present a summary of refined findings at a public meeting for review and comment prior to City Council consideration.



**DENSITY BONUS ACTIVATION**

Units that meet the local inclusionary requirements can also qualify a project for development incentives under State Density Bonus Law (SDBL) (Government Code § 65915, et seq.). SDBL offers developers a host of incentives, concessions, waivers, and other favorable treatment in return for the inclusion of affordable housing units (or other qualifying project features) in development projects. These benefits are triggered once a project includes 5% very low-income units or 10% low or moderate income units. Depending on how the City's inclusionary requirement is allocated between low-income and very low-income households, projects that are required to provide 15% or 20% affordable units could qualify for the following increase in density above what is permitted under local zoning. Although these increases in density are allowed, developers may or may not increase the number of housing units for a variety of reasons, including site constraints or increased construction costs associated with higher density housing. Additionally, as the percentage of affordable units built increases, the associated allowed density increase climbs, as well. The figures shown in Table 6 show the minimum density increases required by law.

**Table 6: State Density Bonus Allowances**

<b>Percentage of Affordable Units</b>	<b>Increase in Allowed Density</b>
5% Very Low or 10% Low	20%
10% Very Low	32.5%
10% Moderate	5%
11% Very Low or 20% Low	35%
15% Very Low or 24% Low	50%
15% Very Low or 24% Low + Additional 5-15% Very Low or Moderate	Up to 100%
Senior housing of 35 units or more (no required affordability)	20%

**Incentives/Concessions**

In addition to the density bonus, the City is required to provide one or more incentives or concessions to a project that qualifies for a density bonus (whether or not the applicant chooses to actually use the density bonus for which they qualify). A concession or incentive is defined as:

- a reduction in site development standards or a modification of zoning code or



**CITY COUNCIL AGENDA ITEM NO. G.5  
05/27/2025**

- architectural design requirements, such as a reduction in setback or minimum square footage requirements; or
- approval of mixed use zoning; or other regulatory incentives or concessions which actually result in identifiable and actual cost reductions.

The number of required incentives or concessions for which a given project is eligible is based on the percentage of affordable units in the project, and the City is required to grant the concession/incentive unless it has substantial evidence that the proposed concession or incentive:

- does not result in identifiable and actual cost reductions;
- would have a "specific, adverse impact" on public health or safety or a historic property listed on the California Register that cannot be mitigated; or
- would be contrary to state or federal law.

**Waivers/Reduction of Development Standards**

Projects that qualify for development incentives under the SDBL can avoid local development standards that would conflict with the development of the project as designed by requesting waivers or reductions of these standards. The SDBL allows any developer who is eligible for a density bonus (even if one is not requested) to request development standards to be waived or reduced if the development standard would physically prevent the project from being built at the permitted density and with the granted incentive/concession. The waiver or reduction of a development standard does not count as an incentive/concession, and there is no limit on the number of development standard waivers that may be requested or granted. The City is not required to waive or reduce development standards that would;

- have a "specific, adverse impact" on public health or safety, that cannot be mitigated;
- have an adverse impact on a historic property listed on the California Register; or
- would be contrary to state or federal law.

A recent case (*Banker's Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755) held that waivers must be granted for a project "as designed" unless one of the findings to deny the waiver can be made.

Per the SDBL, projects that are eligible for a density bonus are not required to construct the density bonus units in order to take advantage of the waivers, concessions/incentives allowed under the law. In the last five years, the City



approved five residential development applications that included a density bonus request. The projects all requested waivers and/or concessions/incentives, but only two of the projects actually proposed to build the density bonus units. Table 7 below lists the projects and the percentage of density bonus requested and approved, if applicable.

**Table 7: Recent Density Bonus Requests**

<b>Project</b>	<b>Proposed Market Rate Units</b>	<b>Affordable Ordinance Obligation</b>	<b>Proposed Affordable Units per Ordinance</b>	<b>Density Bonus Request</b>	<b>Waivers, concessions, incentives requested?</b>
SEECON Lone Tree Way	36	10%	1VL 2L 1M	0%	Yes
O'Hara Apartments	21	15% (AB2011)	2VL 2L 1M	0%	Yes
Orchard Grove	45	2%	1L 5M	2%	Yes
Orchard Grove North	30	13%	2M 2VL	17.2%	Yes
Hanson Lane	82	10%	5VL 4L 3M	0%	Yes

**ECONOMIC FEASIBILITY OF AFFORDABLE HOUSING**

Many economic factors impact the production and feasibility of market rate and affordable housing in Brentwood, regardless of what affordable housing requirements the City adopts. New housing development can be costly, time consuming and complex to undertake for the following reasons:

- Developers must make substantial upfront investments to purchase property, obtain governmental approvals, pay applicable municipal fees and permits, undertake site improvements, and secure funding before construction begins.
  - In Brentwood, the costs of various municipal fees range from about \$55,000 per unit for a 1,000 square foot multifamily apartment to about \$105,000 per unit for a 3,000 square foot single family home.
- Building construction costs are typically the largest component of housing



**CITY COUNCIL AGENDA ITEM NO. G.5**  
**05/27/2025**

development costs and vary significantly depending on the housing design, provision of parking, building construction type, and amenities, and they have increased rapidly over the past 5 to 10 years in the Bay Area.

- Regional construction costs for comparable housing types tend to be similar (3-5% variation in Bay Area counties according to Saylor Construction).
- The development process may take 5 to 10 years to secure land use approvals, build infrastructure, secure financing and investment, undertake construction, and complete the sale or rental of new housing.
  - Changes in the economy, real estate market and legislation create uncertainty and volatility during this multi-year development process.
  - Developers must finance or secure investment to pay for development costs until housing is sold or recapitalized, which escalates development costs particularly if interest rates and returns increase as recently occurred.
  - This increases risk to the developer, its investors and lenders. For example, housing development costs may increase significantly while revenues may or may not keep pace as development.
- Housing market conditions vary significantly across communities and neighborhoods.
  - For example, apartment rents and home prices in eastern Contra Costa County are typically lower than cities located closer to the San Francisco Bay.
    - According to RentCafe.com, Brentwood's average rents for existing apartments are about \$2.80/SF while those in Lafayette are about \$3.20/SF and those in San Francisco are about \$4.50/SF.
- For new development to be economically feasible, the proposed project must generate sufficient return (margin/profit) between anticipated revenues and development costs to attract and repay capital considering these risk factors.
  - Given that construction costs for similar housing types tend to be similar in the region, lower rents and home prices narrows the potential margin (or return) over development costs, which makes feasibility more challenging to achieve.
- High housing costs widen the difference between what it costs to rent or purchase market rate housing and affordable housing at restricted prices (referred to as the affordability gap).
  - To evaluate development feasibility, the required provision of onsite



**CITY COUNCIL AGENDA ITEM NO. G.5**  
**05/27/2025**

inclusionary units (and associated limitations on future revenues) must be analyzed by comparing future housing revenues and operating costs considering this affordability gap.

- As the onsite inclusionary percentage increases and/or units are targeted at deeper levels of affordability, new development may not generate sufficient revenues from market rate units to be financially feasible and meet lender and investor underwriting requirements.

Collectively, these factors often make it challenging for developers to undertake new affordable housing developments that are economically feasible in cities like Brentwood.

**NEXT STEPS**

Staff is seeking the City Council's direction on the following issues:

1. Whether to increase the Affordable Housing Ordinance affordability percentage requirement from 13% to another percentage.
2. If the required affordability component is increased, how to allocate the new requirement across affordable income categories.
3. Whether to conduct an economic feasibility study to support an increase in the affordability percentage, as recommended by staff. If Council directs staff to conduct a study, staff would return to the Council for approval of the funds for the study. Staff would then circulate an RFP to identify a consultant to prepare the study.

**CITY COUNCIL STRATEGIC INITIATIVE**

Focus Area 4: Community Development. 4. Provide a diversity of housing opportunities, including equitable distribution of affordable housing for all socio-economic segments of the Brentwood community.

**PREVIOUS ACTION**

Previous Action by the City Council is included on Attachment 1.

**DATE OF NOTICE**

Not Applicable.

**ENVIRONMENTAL DETERMINATION**

Not Applicable.



### **ALTERNATIVE OPTION(S)**

The following are alternative options that the City Council may consider:

1. Leave the affordable housing obligation at current its 13%.
2. Update the affordable housing ordinance to increase the percentage to 15%, which would not require a feasibility study or additional budget to complete.
3. Update the affordable housing ordinance to increase the percentage to 20%, and provide direction on a feasibility study and additional budget.

### **ATTACHMENT(S)**

1. Previous Action(s)
2. Ordinance 1041

## ATTACHMENT 1

Previous actions related to this agenda item that were taken by the City Council are listed below.

Visit [www.brentwoodca.gov/meeting](http://www.brentwoodca.gov/meeting), and select the meeting date(s) desired to see the reference materials and videos.

- Visit [www.brentwoodca.gov/municipalcode](http://www.brentwoodca.gov/municipalcode) to research references to the Brentwood Municipal Code and search by the code section(s) cited.

Ordinance 1041 was adopted by the City Council on July 26, 2022 further amending the City of Brentwood's Affordable Housing Program.

Ordinance 1014 was adopted by the City Council on April 28, 2020 amending the City of Brentwood's Affordable Housing Program.

**ORDINANCE NO. 1041**

**AN ORDINANCE AMENDING CHAPTER 17.725 OF THE CITY OF BRENTWOOD  
MUNICIPAL CODE ("AFFORDABLE HOUSING")**

**WHEREAS**, the City of Brentwood, California (the "City") is a general law city, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, California Government Code Section 65800, *et seq.* authorizes cities to adopt and administer zoning laws, ordinances, rules and regulations as a means of implementing that city's General Plan; and

**WHEREAS**, on September 9, 2003, the City Council of the City of Brentwood adopted Ordinance 756, establishing the Affordable Housing Program, as recommended by the Planning Commission; and

**WHEREAS**, the City Council adopted Ordinance No. 790 on January 11, 2005, and amended in its entirety Chapter 17.725 of the City of Brentwood Municipal Code (the "Affordable Housing Ordinance"); and

**WHEREAS**, the City Council adopted Ordinance No. 842 on April 27, 2007, amending the Affordable Housing Ordinance; and

**WHEREAS**, the City Council adopted Ordinance No. 874 on July 28, 2009, amending the City's Affordable Housing Ordinance; and

**WHEREAS**, the City Council adopted Ordinance No. 909 on November 13, 2012, amending the City's Affordable Housing Ordinance; and

**WHEREAS**, the City Council adopted Ordinance No. 1014 on April 28, 2020, further amending the City's Affordable Housing Ordinance; and

**WHEREAS**, on November 9, 2021, the City Council directed staff to bring forth a future agenda item to discuss options related to increasing the Affordable Housing Ordinance (Chapter 17.725) obligation to a maximum of 25%, and provide information on other cities' affordable housing obligation provisions, and other requested information related to affordable housing; and

**WHEREAS**, on March 22, 2022, the City Council heard a presentation from staff on increasing the Affordable Housing Ordinance's inclusionary obligation, possible removal of in-lieu fee payment option, use of housing funds for HOA dues for affordable homeowners, and information on the City's Regional Housing Needs Allocation (RHNA) and directed staff to return at a future meeting and provide additional information; and

**WHEREAS**, on April 26, 2022, the City Council heard a presentation from staff on requested information relating to affordable housing and increasing the affordable housing obligation, and directed staff to draft potential Affordable Housing Ordinance amendments for Council consideration; and

**WHEREAS**, acting on such Council direction, staff has prepared an ordinance (the "Ordinance"), which is attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, on June 21, 2022, the Planning Commission considered the staff report, the Ordinance, supporting documents, all public comments submitted, and all other appropriate information that was been submitted, and recommended approval of the Ordinance to the City Council.

**NOW, THEREFORE BE IT RESOLVED**, the City Council of the City of Brentwood does ordain as follows:

**SECTION 1.** Brentwood Municipal Code Section 17.870.008 reads as follows:

*No rezoning of property or text amendment shall occur which is inconsistent with the city's community development plan. In making a decision the planning commission and council shall consider the consistency of the proposed action to the community development plan and other applicable city plans, and shall consider whether the proposed action is inappropriate or otherwise contrary to the public interest.*

This Ordinance is a zoning text amendment that is consistent with the 2014 City of Brentwood General Plan (as amended from time to time), insomuch as:

- a. The Ordinance will increase the supply of housing to the Brentwood community and will require that "[a]ll affordable units within a residential development shall be comparable to the market-rate units in exterior design, quality, materials, architectural elements and overall construction quality, as well as number and proportion of bedroom types," (Brentwood Municipal Code Section 17.725.003.F.) per Policy H 1-2 ("Endeavor to ensure the supply of safe, decent, and sound housing for all residents").
- b. The Ordinance will assist in meeting the shelter needs of all Brentwood residents by increasing the supply of housing affordable to very-low, low, and moderate income households, per Goal H 1 ("Housing: Provide a diversity of housing opportunities to enhance the City's living environment and to satisfy the shelter needs of all Brentwood residents").
- c. The Ordinance will not displace the predominance of single-family home development as Brentwood's predominant residential product type, but will allow affordable housing developers to request other housing types, per Policy LU 2.1 ("Maintain Brentwood's predominant land use of single family residential while providing for a mix of housing types throughout the community, in accordance with the Housing Element").
- d. The Ordinance includes for the possibility of the construction of affordable duets, duplexes, triplexes or fourplexes on corner lots within single-family areas, per Policy LU 2.8 ("Provide for a variety of residential products through the Zoning Ordinance in order to accommodate the housing needs of all segments of the city's population").

**SECTION 2.** The text of Chapter 17.725 of the Brentwood Municipal Code is hereby repealed in its entirety and is replaced as set forth in Exhibit "A" attached hereto and incorporated herein.

**SECTION 3.** The Ordinance shall be published in accordance with Government Code Section 36933 by either posting or publishing the Ordinance in accordance with that law. Further, the City Clerk is directed to cause the text adopted in Section 2 above to be entered in the City of Brentwood Municipal Code. This Ordinance shall take effect and be in force 30 days following its adoption.

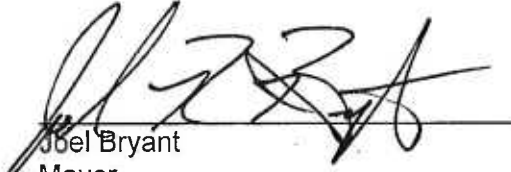
**SECTION 4.** The Ordinance is exempt from review under the California Environmental Quality Act (Public Resources Code §§21000, *et seq.*, and the Guidelines for CEQA, 14 CCR §§15000, *et seq.*) because it has no potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, per 14 CCR §15061(b)(3). Further, the Ordinance is also exempt because it does not apply to any particular housing project at this time and it is thus speculative to evaluate any such future project in the context of consideration of this Ordinance.

**THE FOREGOING ORDINANCE** was introduced with the first reading waived at a regular meeting of the Brentwood City Council on the 12th day of July 2022 by the following vote:

**AYES:** Mendoza, Meyer, Rarey, Mayor Bryant  
**NOES:** None  
**ABSENT:** Rodríguez  
**RECUSED:** None

And was adopted with the second reading waived at a regular meeting of the Brentwood City Council on the 26th day of July by the following vote:

**AYES:** Mendoza, Meyer, Rarey, Rodríguez, and Mayor Bryant  
**NOES:** None  
**ABSENT:** None  
**RECUSE:** None

  
Joel Bryant  
Mayor

ATTEST:  
  
Margaret Wimberly, MMC  
City Clerk

**Exhibit A**

**Brentwood Municipal Code Chapter 17.725**

This chapter shall be amended to provide as follows, with deleted text ~~struck through~~ and new text underlined:

**Chapter 17.725 AFFORDABLE HOUSING**

17.725.001 Title and purpose of provisions.

17.725.002 Definitions.

17.725.003 General requirements.

17.725.004 Alternative equivalent proposal.

17.725.005 Implementation procedures.

17.725.006 Affordable unit concessions and construction incentives.

17.725.007 Affordable housing in lieu fee fund.

17.725.008 Brentwood rental housing trust fund.

17.725.009 First time homebuyer fund.

17.725.010 Enforcement.

17.725.011 Waiver.

**17.725.001 Title and purpose of provisions.**

A. Title. The provisions of this chapter shall be known as the "affordable housing program" of this title.

B. Purpose. The purpose of this affordable housing program is to:

1. Enhance the public welfare and assure that further housing development contributes to the attainment of the city's housing goals as described in the housing element of the general plan, by creating, preserving, maintaining, and protecting housing affordable for households of very low-, low- and moderate-income;

2. Assure that the remaining developable land in the city's planning area is utilized in a manner consistent with the city's housing policies and needs;

3. Increase the number of affordable housing units in Brentwood in recognition of the insufficient number of existing affordable housing units in relation to the community's current and future needs, and

4. Assure that new affordable housing units that are constructed are distributed throughout the city as part of mixed-income developments in order to obtain the benefits that flow from economically diverse communities, increase access to opportunity, and affirmatively further fair housing.

**17.725.002 Definitions.**

As used in this chapter, each of the following terms shall be defined as follows:

"Affordable housing agreement" means a recorded agreement between the city and a residential developer setting forth the residential developer's compliance with the requirements of this chapter.

"Affordable housing cost" means the cost defined in the California Health and Safety Code Sections 50052.5 and 50053 (as may be amended from time to time) for owner-occupied and tenant-occupied units, respectively, and adjusted for assumed household size. The housing manager, on or about July 1 of each calendar year shall publish the maximum affordable housing costs for sales prices and rents as calculated in accordance with the applicable provisions of the California Health and Safety Code.

"Affordable unit" means an ownership or rental-housing unit, including senior housing, occupied by and available to households of very low, low and moderate incomes at an affordable housing cost, adjusted for assumed household size as defined in this chapter, with deed restrictions as defined in this chapter in favor of the city.

"Assumed household size" means the assumed number of persons residing within a dwelling unit. For the purposes of this chapter, assumed household sizes for affordable units for a given number of bedrooms are as follows, or as may be amended by the California Health and Safety Code.

<b>Assumed Household Size</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6 or more</b>
Unit Size	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom	5 Bedroom

"Custom home development" means any residential development being subdivided by one party and sold as individual lots or parcels to separate owners for construction and development of dwelling units.

"Divided in-lieu fee" means the total amount of the in-lieu fees due for the residential development at the time of first building permit issuance divided by the total number of market-rate units in the residential development. The divided in-lieu fee shall be adjusted annually in accordance with appropriate factors or indexes as adopted by the cost allocation plan.

"Dwelling unit" means a dwelling designed and intended for occupancy by one household.

"First time homebuyer" means a household which has not owned its principal place of residence within the last three years.

"In-lieu fee" means a fee paid to the city by an applicant in lieu of providing the required affordable units.

"Low-income household" means a household whose annual income does not exceed the qualifying limits set for "lower income households" in Section 50079.5 of the California Health and Safety Code.

"Market-rate unit" is defined as a residential unit that is not an affordable unit.

"Moderate-income household" means a household whose annual income does not exceed the qualifying limits set for "moderate-income households" in Section 50093 of the California Health and Safety Code and does not include a very low- or low-income household.

"Ownership development" means any residential development that includes the creation of one or more additional dwelling units that may be sold individually. An ownership development also includes the conversion of a residential rental development to a residential ownership development.

"Refinance and Resale Limitation Agreement and Option to Purchase" means a recorded agreement between the city and an individual homebuyer of an ownership affordable unit documenting resale controls and/or rent restrictions.

"Rental development" means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.

"Resale controls and/or rent restrictions" means legal restrictions by which affordable units shall be restricted to ensure that the unit remains affordable to very low-, low- or moderate-income households, as applicable, for a period of not less than forty-five years for ownership units and not less than fifty-five years for rental units, or longer periods if required by state housing or federal law or a financing assistance program. Resale controls for owner-occupied units shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the subject property. Rent restrictions for rental units shall be in the form of a regulatory agreement recorded against the subject property.

"Residential development" means and includes, without limitation, for-sale single-family dwellings, multiple-family dwellings, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use developments that include housing units, manufactured housing, mobilehomes, and residential land subdivisions intended to be sold, leased or rented to the general public.

"Very low-income household" means a household whose annual income does not exceed the qualifying limits set for "very low-income households" in Sections 50093 and 50105 of the California Health and Safety Code. "Very low-income households" include "extremely low-income households" as defined in Sections 50093 and 50106 of the California Health and Safety Code. (Ord. 1014 § 1, 2020)

**17.725.003 General requirements.**

A. Applicability. This chapter shall apply to all new residential developments of five or more lots or dwelling units designed and intended for residential occupancy in the city. No residential development, other than that exempted in subsection C of this section, shall be undertaken, and no building permits shall be accepted for processing or issued, unless the development has been approved in accordance with this chapter.

B. Affordability Requirement. Developers of residential developments of five or more lots or dwelling units designed and intended for residential occupancy shall construct or make possible the construction of a minimum of ~~six~~ thirteen percent of the total number of dwelling units within the residential development as affordable units, allocated to income levels as set forth in this chapter, or as provided in an affordable housing agreement which specifies the means of satisfying this chapter. Commencing on January 1, 2021, the required percentage of affordable units shall be increased to ten percent of the total number of dwelling units for any residential development of five or more lots, unless the application was determined to be complete by December 31, 2020 under Government Code Section 65589.5(o). The foregoing requirement shall be applied prior to the application of a density bonus and no more than once to an approved residential development regardless of changes in its character or ownership, provided that the total number of dwelling units does not change.

1. Residential Developments of Five to Nine Dwelling Units. Developers of residential developments consisting of five to nine dwelling units ~~shall~~ may either (a) construct one low-income affordable unit meeting the standards in this chapter, or (b) pay a fee equal to fifty percent of the low-income in-lieu fee, as established by resolution of the city council. Alternatively, the applicant may pay a fee equal to fifty percent of the low-income in-lieu fee, as established by resolution of the city council, or provide an "alternative equivalent" as established in this chapter, if approved by the City Council as specified in Section 17.725.004. However, if all or any portion of a residential development of five to nine dwelling units is later re-subdivided into ten or more parcels or dwelling units, the city's affordable housing requirement may not be satisfied by payment of an in-lieu fee.

2. Application to Residential Development of Ten or More Dwelling Units. In applying this requirement to residential development consisting of ten or more dwelling units, any decimal fraction less than 0.50 dwelling units shall be disregarded and any decimal fraction equal to or greater than 0.50 dwelling units shall be construed as one dwelling unit.

C. Exemptions. The following are exempt from the provisions of this chapter:

1. Residential development governed by a development agreement expressly precluding compliance with this chapter or an ordinance of this nature. In cases in which the development agreement does not expressly preclude compliance with this chapter, the project shall comply with this chapter;

2. Replacement housing due to natural disaster on a one for one basis (i.e., one dwelling unit replaced for each legally existing dwelling unit);

3. Modifications to existing properties or structures that do not increase the number of dwelling units;

4. Residential care facilities with dwelling units that are nonself-sufficient units; that is, they do not include kitchen facilities (if a project includes both self-sufficient and non-self-sufficient units, only the latter are exempt);

5. Subdivisions consisting of between one and four lots or dwelling units;

6. Development of up to four new dwelling units on an existing residential lot of record;

7. Development of up to three additional dwelling units on a lot zoned to accommodate up to a maximum of four dwelling units, and which already contains at least one existing dwelling unit, provided that the maximum limit of dwelling units is not increased;

8. A residential second unit or accessory dwelling unit (as defined by state law) on an existing residential lot, subject to compliance with the zoning ordinance;

9. Residential developments whose applications were determined to be complete under Government Code Section 65943 or any successor provision prior to the effective date of the ordinance codified in this chapter, provided that such residential developments shall comply with the predecessor ordinance, resolution, or policy in effect immediately prior to the effective date of the ordinance codified in this chapter;

10. Residential developments exempted by California Government Code Section 65589.5(o) or successor provision, provided that such residential development shall comply with any predecessor ordinance, resolution, or policy in effect on the date a preliminary application for the development containing all of the information required by Government Code Section 65941.1 was submitted to the city.

D. Allocation of Affordable Units to Income Levels. Dwelling units located within the Brentwood city limits for very low-, low- and moderate-income households as required by this chapter shall be allocated as follows:

~~Allocation through December 31, 2020 (six percent affordability requirement):~~

-  
-

<b>Ownership Development</b>	-
Moderate-Income Households	1%
Low-Income Households	4%
Very Low-Income Households	1%

-  
-

<b>Rental Development</b>	-
Low-Income Households	3%
Very Low-Income Households	3%

— Allocation applicable commencing January 1, 2021 (ten-percent affordability requirement):

<b>Ownership and Rental Development</b>	
Moderate-Income Households	63%
Low-Income Households	4%
Very Low-income Households	3%
<b>Rental Development</b>	-
Low-Income Households	5%
Very Low-Income Households	5%

Projects of 10 or 11 units shall contain one low-income unit; projects of 12 to 19 units shall contain one low-income unit and one moderate-income unit; projects of 20 to 26 units shall contain one low-income unit, one moderate-income unit, and one very low-income unit; and projects of 27 to 34 units shall contain one low-income unit, two moderate-income units, and one very low-income unit. For larger projects, the number of units required at each income level shall be calculated to achieve an income distribution as close as possible to that specified in the above table.

E. Concurrent Construction. All affordable units in a residential development or phase of a residential development shall be constructed prior to or concurrently with market-rate units, as set forth, and in the location specified, in a schedule of construction approved by the city and set forth in the affordable housing agreement. The building permits for the last ten percent of the market-rate units shall not be issued until the last affordable unit has been issued a building permit and construction of the last affordable unit has begun.

F. Design and Distribution of Affordable Units. All affordable units within a residential development shall be comparable to the market-rate units in exterior design, quality, materials, architectural elements and overall construction quality, as well as number and proportion of bedroom types. If approved by the planning commission in the design review approval process as specified in Section 17.725.006(D), the developer may request an exception to the foregoing in order to reduce the cost of the affordable units by permitting reduced front, side and backyard landscaping and smaller square footage for bedrooms. Otherwise, affordable units shall be comparable to the approved landscape plans, exterior elevations, and bedroom square footage found in the approved plans for the remainder of the residential development. In addition, all affordable units shall include the same or similar interior amenities offered for market-rate units within a residential development. Affordable units shall be dispersed throughout the residential development so as to prevent the concentration of affordable units, unless the planning commission has approved an exception to this standard to accommodate senior housing or to reduce affordable unit costs as described above, or approval of an off-site location has been granted.

1. Very Low- to Medium-Density Zoning. For residential developments with very low- to medium-density zoning designations as defined by the general plan, the affordable unit may be

smaller in size than other models in the residential development. The minimum permissible affordable unit size is one thousand six hundred square feet on a three thousand square foot parcel. As a means to provide massing and lot proportions consistent with the residential development, a duet unit will satisfy the city's affordable housing requirement. For example, a duet unit can be located on a corner with each duet unit being one thousand six hundred square feet on two separate three thousand square foot parcels.

2. High- to Very High-Density Zoning. For residential developments with high- to very high-density zoning designations as defined by the general plan, the affordable units shall be comparable to market-rate units in square footage.

G. Length of Affordability. All affordable ownership units shall remain affordable for a period of at least forty-five years from date of original occupancy and each subsequent ownership, and all affordable rental units, including any affordable rental units provided as an agreed-upon alternative equivalent proposal pursuant to Section 17.725.004, shall remain affordable for a period of at least fifty-five years from the date of the initial rental or leasing period, or longer periods as may be required by state housing law.

H. Concurrently with applicant's submission of a universal application to the city with respect to any proposed residential development subject to this chapter, applicant shall also submit a narrative describing how the proposed residential development will comply with the requirements of this chapter. (Ord. 1014 § 1, 2020.)

#### **17.725.004 Alternative equivalent proposal.**

As an alternative to constructing affordable units on site, a residential developer may propose one of the alternative equivalents set forth below to meet the requirements of Section 17.725.003. Such proposed alternative shall be processed in accordance with Section 17.725.005 of this chapter. An alternative equivalent proposal may include, but is not limited to, payment of an in-lieu fee for ownership development, dedication of vacant developable land, dedication of constructed units to the city's rental housing program, construction of affordable units on another site, or conversion of existing market-rate units (either for-sale or for-rent) within the city to affordable units through acquisition and enforcement of required affordability restrictions consistent with this chapter. All alternative equivalent proposals must be submitted in writing, demonstrate that the alternative equivalent will provide as much or more affordable housing in the city as would be achieved through the construction of required on-site affordable units required under Sections 17.725.003(D), be consistent with the city's housing element, and not increase residential segregation. Additionally, for ownership developments, an alternative equivalent proposal must result in an approximately equal geographic distribution of affordable units throughout the city.

A. Approval of Payment of In-Lieu Fees. In-lieu fees may be paid for: ~~(1) residential developments consisting of between five and nine dwelling units; or (2) the very low income requirement for a residential development consisting of ten or more dwelling units.~~ The amount of the in-lieu fee shall be adopted by resolution of the city council, and may be amended from time to time.

1. In-lieu fees for custom home developments shall be paid at time of building permit issuance for each custom home. For each permit pulled, the developer shall pay either the divided in-lieu fee or in a lump sum with the total fee, as elected by the developer.

2. In-lieu fees for all other residential developments shall be paid at building permit issuance for each market-rate unit constructed within the development. For each permit pulled, the developer shall pay either the divided in-lieu fee or in a lump sum as with the total fee, as elected by the developer.

3. Except as may otherwise be required by law, the amount of the fee shall be as set forth in the in-lieu fee resolution in effect at the time of payment. In-lieu fees paid to the city shall be deposited into the affordable housing in-lieu fee fund in accordance with Section 17.725.007.

4. The in-lieu fee paid by the developer of an ownership development shall be calculated using a market rate median sales price based in-lieu fee. This fee is based on the twelve-month median sales price for a three-bedroom, one thousand five hundred to one thousand seven hundred square foot, market-rate home in Brentwood, minus the current affordable housing cost as defined in the California Health and Safety Code for owner-occupied units for the applicable household income level.

The amount of the in-lieu fee for each affordable unit shall be the difference between the market rate median sales price, calculated as above, and the affordable housing cost for a for-sale three-bedroom unit.

5. Developers of rental developments must construct affordable units on site or satisfy the affordable requirements through an alternative equivalent proposal other than payment of in-lieu fees. ~~unless, prior to the last discretionary approval for the development, the applicant requests a waiver under Section 17.725.011, and the city council approves the in-lieu fee based on specific findings demonstrating that the city's goals of increasing affordable housing production are equally met through use of applicant's proposed alternative.~~

B. Dedication of Vacant Developable Land. An applicant may dedicate vacant developable land to the city or city-approved nonprofit housing developer in-lieu of constructing a portion of the required affordable units, if the city council finds all of the following:

1. The dedication of vacant land in lieu of constructing affordable units is consistent with this chapter's goal of creating, preserving, maintaining, and protecting housing for very low-, low- and moderate-income households;

2. The dedicated vacant land is large enough and appropriately zoned to accommodate the number of affordable units that the applicant would otherwise be required to construct by Sections 17.725.003(D);

3. The dedicated vacant land is improved with infrastructure and utilities required to serve the property, including, but not limited to, power, telephone, cable, gas, water, sewer and fiber optics, grading, and all applicable fees, taxes, and assessments, including, but not limited to, school and flood control fees, and excluding any affordable housing in-lieu fees, have been or will be paid by the applicant;

4. The dedicated vacant land is located inside the city, or the vacant land will be annexed to the city prior to issuance of any building permits to the applicant for his/her related market-rate dwelling unit(s);

5. That the off-site location would not increase segregation; and

6. That the development of affordable units on the dedicated land will be financially feasible.

C. Off-Site Construction of For-Sale or For-Rent Affordable Units or Conversion of Market-Rate For-Sale or For-Rent Units to Affordable Units. An applicant may construct the required affordable units off site from the proposed market-rate development site by causing the construction of new ownership or rental affordable units or convert existing market-rate ownership or rental affordable units with the approval of the city council and subject to the city council's approval of each of the following findings and imposition of the following conditions of approval on each tentative map or other entitlement:

1. Required Findings for Construction and Conversion.

a. The construction of the affordable units off site or conversion of the existing market-rate units, excluding mobile-home units and units within cooperative developments, in lieu of constructing affordable units on site is consistent with this chapter.

b. The developer has submitted documentation to the satisfaction of the city manager or designee that demonstrates that the construction of the affordable units on site would be impractical or that off-site construction or conversion of market-rate units to affordable units will significantly benefit the city.

c. The residential development will be subject to the conditions of approval set forth in subsection(C)(3) of this section. The conditions of approval for the market-rate development shall require that any off-site affordable units be governed by resale controls and/or rent restrictions similar to those required for on-site affordable units.

d. The quality and quantity of affordable units constructed off site and market-rate units converted to affordable units shall be equivalent to affordable units that would have been constructed on site to satisfy the city's affordable housing requirement.

e. If conversion of existing market-rate units to affordable units is proposed, the proposed conversion is consistent with Government Code Section 65583.1, and the City may substitute the conversion of these units for the obligation to identify adequate sites in its housing element, as provided in Government Code Section 65583.1.

2. Additional Finding Required for Construction of Ownership or Rental Affordable Units.

a. The conditions of approval and subdivision guarantee for a residential project, or other security such as a cash deposit, are adequate to provide for the construction of the off-site affordable units prior to or concurrently with the completion of the on-site construction of the market-rate units.

3. Required Conditions.

a. Affordable units constructed off site shall be constructed at the time specified in the affordable housing agreement.

b. Affordable units converted from market-rate units shall be both converted and inspected at the time specified in the affordable housing agreement. Market-rate units converted to affordable units shall require inspection by the community development department to ensure that the affordable units are in good condition and repair, and conform to all applicable city building and zoning codes.

c. Existing very low-, low-, or moderate-income-households that occupy market-rate units being converted to affordable units shall not be displaced from those units. If temporary or permanent displacement occurs while the converted units are being repaired or rehabilitated, the developer shall be responsible to pay relocation and moving benefits to the displaced households in accordance with the California Code of Regulations, Title 25, Chapter 6, (California Relocation Assistance Guidelines). The calculation of relocation and moving benefits to be provided by developers to temporarily or permanently displaced households shall be submitted to and approved by the city for verification of compliance with the California relocation assistance guidelines.

D. Dedication of Affordable Units to the City of Brentwood. An applicant may dedicate constructed or converted on-site or off-site affordable units to the city's rental housing program to satisfy the requirements of this chapter. Mobile homes and units within cooperative developments are excluded from dedication. Each unit dedicated to the city shall equate to the construction of two affordable units that would otherwise be required pursuant to Section 17.725.003(D). ~~Any units dedicated to the city's rental housing program shall be from the Rental stream income~~ from these affordable rental units shall be deposited into a Brentwood rental housing trust fund administered by the city's finance director in accordance with Section 17.725.008.

All units dedicated to the city pursuant to this chapter shall meet the following requirements prior to acceptance by the city:

1. All applicable fees (including development impact fees), capital improvement financing program assessments, and bond interest payments shall have been prepaid by the developer.
2. The units shall be less than twenty years old and in good condition and repair, as verified by an inspection conducted by the community development department. A second such inspection may need to be performed to confirm that any repair punchlist generated by the initial inspection is completed prior to the city's acceptance of the unit into the rental housing program.
3. The developer shall have installed any front yard, side yard, any backyard landscaping and the unit's interior shall meet the city's minimum interior finish and appliance requirements.
4. The sprinkler system, window coverings, and all appliances shall have been installed in the unit in accordance with the list of required items maintained by the city manager or designee.
5. Each unit must be on a subdivided parcel in accordance with Government Code Section 66426, 66427, or 66428.
6. The developer shall pay all recording, escrow and title fees involved in the transfer of title to the city, including the costs of a title policy insuring city's title in a form and with exceptions approved by the city.

E. Other Means of Fulfilling Affordable Housing Requirements. Subject to city manager or designee approval, any developer may fulfill its affordable housing requirement through additional alternative equivalent methods not specifically mentioned in this chapter, including through the provision of rental affordable units by developers of ownership development projects (in accordance with Government Code Section 65589.8), provided that the city council determines such alternative results in the same number of affordable units that would have been provided with on-site construction of affordable units and that the affordable units otherwise meet all requirements of subsections F through G of Section 17.725.003. (Ord. 1014 § 1, 2020)

#### **17.725.005 Implementation procedures.**

A. Satisfaction of Affordable Housing Requirement. Each proposal for satisfying the city's affordable housing requirement, together with a proposed affordable housing agreement per subsection B of this section, shall be reviewed by the city manager or designee, considered for recommendation by the city council committee having jurisdiction, and forwarded to the city council for approval on its consent calendar agenda. The requirements of this chapter shall be satisfied by all ownership and rental developments subject to this chapter, unless the applicant receives a waiver under Section 17.725.011.

B. Agreements. Prior to the approval of a final map for any residential development, or issuance of a building permit for a unit within a residential development, to which this chapter applies, whichever comes first, the city and the residential developer shall enter into an affordable housing agreement in a form approved by the city attorney. For those residential developments for which affordable units will be constructed or converted on or off site, the affordable housing agreement shall include appropriate resale controls and/or rent restrictions. For ownership affordable units, the city and the individual homebuyer shall be required to enter into a recorded refinance and resale limitation agreement in a form approved by the city attorney. The city manager or designee is authorized to execute affordable housing agreements, resale controls and/or rent restrictions and any other documents necessary to effectuate the implementation of this chapter, provided such agreements and documents are consistent with the requirements of this chapter.

C. Annual Monitoring and Transfer Fees. Agreements involving rental units provided off site or by conversion of market-rate units as specified in Section 17.725.004(C) shall require the owner of the affordable rental units to submit an annual monitoring report to the housing division, in a format approved by the city manager. For each affordable rental unit provided hereunder, the current owner may be required to pay an annual monitoring fee for the term of required affordability in the amount set forth in the affordable housing agreement. For each owner-occupied affordable unit provided under this chapter, the current owner may be required to pay a transfer fee for any change of ownership as adopted from time to time by the city council during the term of required affordability in the amount set forth in the refinance and resale limitation agreement.

D. Resale Prices for Affordable Ownership Units. The maximum resale price for an affordable ownership unit and terms of resale to an eligible household shall be set by the community development director pursuant to the affordable housing cost as defined in Section 17.725.002(A) and as set forth in a refinance and resale limitation agreement.

E. City's Right of Option to Purchase Affordable Ownership Units. The resale restrictions as set forth in the refinance and resale limitation agreement shall provide that in the event the owner cannot in good faith and despite his/her best reasonable efforts, locate an eligible household to purchase an affordable ownership unit at an affordable housing cost, the owner shall give written notice of such circumstances, and an option to purchase, to the city. The city shall also have an option to purchase the affordable unit at the maximum resale price, as limited by any applicable affordability restrictions, if the owner defaults on the terms of the refinance and resale limitation agreement.

F. Selection Criteria for Rental or Ownership Units. No household at the time of move-in shall be permitted to rent, purchase or occupy an affordable unit that is required under this chapter unless its qualifications are consistent with this chapter and the housing manager has approved the household's eligibility. Eligible potential occupants of ownership affordable units must be first-time homebuyers and will be qualified on the basis of household income as defined in this chapter, including all sources of income and assets, the relationship between household size and the size of the available units, and any further criteria required by law and/or established by the city council. The affordable housing developer shall use an equitable selection method established in conformance with the terms of this chapter and in compliance with state and federal law. Selection of qualified households shall be based on the affordable housing priorities established below:

Priority 1. Eligible applicants for an affordable unit that live or work within Brentwood city limits. Preference will not be allowed if not permitted by state or federal law or other fair housing restrictions.

Priority 2. Other qualified applicants that do not live or work within Brentwood's city limits.

The community development director shall establish and maintain eligibility selection contact lists for qualified households based on the two housing priority groups mentioned in subsection F of this section. Proof of qualification for a priority group shall be provided by a household before placement on one of the selection contact lists. The lists shall be updated as needed.

By virtue of their position or relationship, city senior management employees and officials and their children, or members of the city's agencies, authorities, or commissions who have, by the authority of their position, policy making authority or influence affecting city housing programs, are ineligible to occupy an affordable unit. (Ord. 1014 § 1, 2020)

#### **17.725.006 Affordable unit concessions and construction incentives.**

For any residential development meeting the requirements specified in Section 17.725.003 of this chapter, the city may offer incentives or financial assistance to encourage compliance with this chapter to the extent resources for this purpose are available and approved for such use by the city. In order to provide flexibility in the application of these concessions and incentives, and to ensure that they fit the variety of circumstances and different development projects regularly processed by the city, such incentives may include, but shall not be limited to, any of the following items, applied alone or in any combination upon the city council's finding that a developer has proven that the incentive is necessary to the financial feasibility of the residential development.

A. **Development Processing Fee Deferral.** The city manager or designee may approve deferring payment of city processing and plan check fees applicable to the review and processing of the project. The terms and payment schedule of the deferred processing fees shall be subject to the approval of the city manager or designee. In no case shall deferred development processing fees be paid later than occupancy of any of the units in the residential development. In no case shall fees be waived.

B. **Development Impact Fee Deferral.** The city manager or designee may authorize the deferred payment of development impact fees applicable to the affordable units. Approval of this incentive requires demonstration by the applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of applicable development impact fees. In no case shall deferred development impact fees be paid later than occupancy of any of the units in the residential development. In no case shall fees be waived.

C. **Density Bonus.** Concurrently with consideration of an application for a residential growth management program allocation, the city may award a density bonus for developments that comply with the very low-, low- or moderate-income affordability provisions of this chapter by constructing units on site, paying the appropriate in lieu fee, providing an acceptable alternative equivalent proposal, or a combination of the above, in accordance with this chapter. In the event that a development is also eligible for a density bonus pursuant to Government Code Section 65915, the density bonus authorized pursuant to this chapter shall be included in any density bonus obtained pursuant to state law and shall not increase the amount of the density bonus above that afforded by state law. An application for a density bonus must be received concurrently with an application for residential growth management program allotments. The density bonus provided shall initially be set at nine percent above the midpoint of the density range established in the general plan and zoning code. Fractional density bonus units shall be rounded in the manner set forth in Section 17.725.003(B)(2) of this chapter. The density bonus amount shall be periodically reviewed by the city engineer, the community development director, and the housing manager, who will recommend that adjustments, as appropriate, be adopted by resolution of the city council. Density bonus units authorized under this chapter shall be excluded from the affordability requirements specified in Section 17.725.003 of this chapter.

D. **Flexible Design Standards.** The approving body may modify city standards, including design guidelines, for affordable units that reduce the costs of and are necessary to result in identifiable and actual cost reductions to provide for affordable housing, including, but not limited to, the following:

1. Reduced lot sizes;
2. Reduced setback requirements;
3. Reduced open space requirements;
4. Construction of duets, duplexes, triplexes or fourplexes on corner lots within single-family areas;
5. Reduced landscaping requirements;

6. Reduced parking requirements;
7. Height restriction waivers.

The applicant shall be responsible for documenting to the satisfaction of city manager or designee, that the modification is necessary for the financial or other feasibility of the residential development. Except for any standards modified by the planning commission, the residential development must otherwise be consistent with all required general plan, zoning code, Uniform Building Code, and other applicable city regulations and policies.

E. Fast Track Processing. The city manager or designee may authorize prioritized application review and project processing including environmental review, report preparation, entitlement meetings, plan checks and project inspections.

F. Direct Financial Assistance. The city council may authorize provision of direct financial assistance in the form of a loan or grant from collected affordable housing trust funds as described in Section 17.725.007 of this code for developments which include dwellings units affordable to very low-, low-, or moderate-income households that exceed minimum affordable unit counts required under Section 17.725.003 of this code.

G. Additional Concessions and Incentives. The city council may consider, on a case-by-case basis, at its sole discretion, the provision of additional concessions or incentives consistent with state law and the housing element of the city of Brentwood general plan for residential development projects that exceed the requirements of this chapter. (Ord. 1014 § 1, 2020)

#### **17.725.007 Affordable housing in lieu fee fund.**

A. Creation. in-lieu fees shall be deposited into the affordable housing in-lieu fee fund, which is part of the housing enterprise.

B. Use. The finance director shall administer all monies in this fund including any interest earnings. Funds shall be disbursed at the discretion of the city council for the purpose of assisting in the construction of very low-, low- or moderate-income dwelling units, or helping with other affordable housing opportunities. Use of this fund may include the provision of loans to help fund rental housing projects. The finance director is authorized to utilize the city council approved budget to annually fund the city housing operating costs. In addition, the finance director is authorized to make budget adjustments as required to forgive the interfund receivable that has accumulated prior to the adoption of the ordinance codified in this chapter. (Ord. 1014 § 1, 2020)

#### **17.725.008 Brentwood rental housing trust fund.**

A. Creation. Net rental income from all rental units dedicated to the city's previous rental housing program shall be deposited into a Brentwood rental housing trust fund, which is part of the housing enterprise.

B. Use. The finance director shall administer all monies in this fund including any interest earnings. All funds other than those specified in subsection C of this section shall be utilized to purchase, construct or repair single-family or multifamily rental unit inside the city limits. One-half of the rental income may be utilized from time to time at the city council's discretion to

further the provision of affordable housing in the city of Brentwood so long as sufficient funds remain to pay for the maintenance and operation of existing affordable housing in the city's rental housing program.

C. **Withholding.** The finance director is authorized to utilize the city council approved budget to annually fund the city housing operating costs from the rental stream of these affordable rental units to fund city housing personnel and administrative costs directly related to management and administration of the Brentwood rental housing trust fund and program. The finance director is further authorized to withhold up to an additional fifteen percent of net proceeds from the rental stream to reimburse city development fees and agricultural mitigation fees for these units until the city development fee accounts are whole. (Ord. 1014 § 1, 2020)

#### **17.725.009 First time homebuyer fund.**

A. **Creation.** Contributions to the city's first time homebuyer program in accordance with Section 17.725.004(D) shall be deposited into the first time homebuyer fund, which is part of the housing enterprise.

B. **Use.** The finance director shall administer all monies in this fund, including any interest earnings. All monies in the fund, other than those specified in Section 17.725.009(C) shall be loaned to first time homebuyers that qualify as a moderate-income, low-income or very low-income household, in accordance with terms and provisions of the approved first time homebuyer program approved by the city council.

C. **Withholding.** The finance director is authorized to utilize the city council approved budget to annually fund the city housing personnel and administrative costs directly related to the management and administration of the first time homebuyer fund and program. (Ord. 1014 § 1, 2020)

#### **17.725.010 Enforcement.**

A. **General.** The city shall enforce this chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The city may suspend or revoke any building permit or approval upon finding a violation of any provision of this chapter. No land use approval, building permit, or occupancy approval shall be granted for any residential development unless it is in compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

B. **Excessive Sales Price and Rents/Legal Action.** It is unlawful, a public nuisance and a misdemeanor for any person to sell or rent an affordable unit at a price or rent exceeding the maximum allowed under this chapter or to a household not qualified under this chapter, and such person shall be subject to a five hundred dollar fine per month from the date of original noncompliance until the affordable unit is in compliance with this chapter. If the city determines that the sales price or rents in excess of those allowed by operation of this chapter have been charged to a household residing in an affordable unit, the city may take appropriate legal action.

C. **Violation Abatement.** The city of Brentwood city attorney or the Contra Costa County district attorney, as appropriate, shall be authorized to abate violations of this chapter and to enforce the provisions of this chapter and all implementing regulatory agreements and affordability controls placed on affordable units by civil action, injunctive relief, and any other

proceeding or method permitted by law. Remedies provided for in this chapter shall not preclude the city from any other remedy or relief to which it otherwise would be entitled under law or equity. (Ord. 1014 § 1, 2020)

#### **17.725.011 Waiver.**

A. A developer of any project subject to the requirements of this chapter may request that the requirements of this section be waived or modified by the city council, based upon a showing that applying the requirements of this section would result in an unconstitutional taking of property or would result in any other unconstitutional result.

B. Any such request for a waiver shall be made in writing to the city council, submitted to the city concurrently with applicant's submission of a universal application for any proposed residential development subject to this chapter.

C. The request for waiver shall set forth in detail the factual and legal basis for the claim of waiver or modification. The city council shall consider the request at the public hearing on the permit application. The applicant shall bear the burden of presenting substantial evidence to support the waiver request, including comparable technical information to support applicant's position.

D. A waiver of an affordable housing requirement may only be approved by the city council to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the city attorney, after adoption of written findings, based on legal analysis and substantial evidence. The decision of the city council shall be final. If a modification or waiver is granted, any change in use within the project shall invalidate the waiver or modification of the affordable housing requirement, and a new application shall be required for any waiver or modification under this section. (Ord. 1014 § 1, 2020)